

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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HOMER J. PHILIPS	)	
C/O JOHN A. & ARLENE N. WALL	)	
	)	DOCKET NO.: PT-1997-8
Appellant,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER AND OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on the 17th day of June, 1998, in the City of Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law. The taxpayer, represented by John Wall and Kevin Wall, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Don Blatt, appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and, upon the receipt of a post-hearing submission from the DOR and the response from the taxpayer, the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

### FINDINGS OF FACT

1. Due, proper, and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The property involved in this appeal is described as follows:

Tract 3 of Certificate of Survey 245196 and improvements located thereon, Lewis & Clark County, State of Montana (Geo Code #05-1994-36-4-02-40-0000).

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$27,286 for 10.078 acres of land and \$365,970 for the improvements.

4. The taxpayer filed an AB-26 Property Adjustment Form on September 16, 1997 stating:

Size Incorrect: √ Grade of 1F-8

5. The taxpayer appealed to the Lewis and Clark County Tax Appeal Board on September 16, 1997 requesting a value of \$18,000 for the land and \$214,990 for the improvements.

6. On October 1, 1997, the DOR responded to the AB-26. The DOR adjusted the market value of the improvements to \$296,106; the land value remained at \$27,286.

7. The county board denied the appeal on October 23, 1997, stating:

Disapproved, board approved adjustment made by the AB-26. Board felt fair market value set. Market value set by DOR as \$296,106.

8. On November 10, 1997 the taxpayer appealed that decision to this Board stating:

How can it be a fair market value when I gave them the contract price & they did not use it.

9. The value indications before this Board are the values subsequent to DOR's AB-26 adjustment: land - \$27,286; improvements - \$268,820. The Appeal Form was filed with the local board prior to the DOR's AB-26 adjustment; therefore, the DOR value indication on the AB-26 are prior to any adjustments.

10. The Board requested from the DOR the "Comparable Sales" sheet which is a product of the Computer Assisted Mass Appraisal System (CAMAS) used to determine market value. This was provided to the Board on June 22, 1998. The taxpayer did not respond to the post-hearing submission.

11. The taxpayer has an ownership interest in Power Townsend Company, a local hardware/retail store.

#### **TAXPAYER'S CONTENTIONS**

The taxpayer requested the land value be adjusted to \$18,000, based on the market value on an adjacent property. The taxpayer testified that subject land was purchased on a contract-for-deed for approximately \$30,000.

The taxpayer stated that this residence has been constructed twice: in Mission, Texas and in Helena, Montana.

The residence in Texas was constructed for \$100,000 and the Helena property was constructed for \$193,362.62 (exhibits 2 & 3 respectively). The taxpayer testified the difference between the two properties is that the Helena property has a basement.

Mr. Wall testified the Texas property sold for \$180,000.

Mr. Wall stated the property has a quality grade of 8, established by the DOR. Mr. Wall requested but was not provided a copy the comparable Grade 8 properties used in determining the value of his property.

#### **DOR'S CONTENTIONS**

Mr. Blatt testified that, based on the DOR's records, the taxpayer purchased the site for \$32,500.

Mr. Blatt testified that an on-site review of the subject property was conducted and adjustments were made to the property record card. The adjustments were square footage, basement finish, and a quality grade reduction from 8 to 8 minus. The result of the AB-26 review reduced the market value of the structure from \$365,970 to \$268,820.

The properties selected by CAMAS to establish a market value indication were deemed non-comparable to the

subject property; therefore, the DOR defaulted to a value indication based on the cost approach.

The DOR property record card (exhibit A, pgs. 5-15) summarized, illustrates the following:

<u>Building Age, Quality, Depreciation</u>	
Year Built - 1993	Effective Age - 1996
Physical condition - Average	
Grade - 8 minus	
Condition/Desirability/Utility (CDU) - Average	
First Floor Area - 2,103 square feet	
Basement Area - 1,315 square feet	
Economic Condition Factor (ECF) - 112%	
Basement	\$ 7,710
<u>First Floor</u>	<u>\$ 94,960</u>
<b>Subtotal</b>	<b>\$102,670</b>
Plumbing	(\$ 3,025)
Additions	\$ 27,700
<u>Other Feature</u>	<u>\$ 1,500</u>
<b>Subtotal</b>	<b>\$ 26,175</b>
Grade Factor - 1.95	
RCN	\$251,250 (replacement cost new)
Percent Good	97%
<u>ECF</u>	<u>112%</u> (economic condition factor)
RCNLD	\$267,500 (replacement cost new less depreciation)
<u>Concrete Paving</u>	<u>\$ 1,320</u>
Total Cost	\$268,820
Land Value	\$ 27,286
<b>Total Value</b>	<b>\$296,106</b>

Mr. Blatt testified the development of the ECF of 112% was derived from sales of residential properties within the established neighborhood and included all quality grades of residential property.

The property record card indicates the structure was constructed in 1993 and has an effective age of 1996.

The DOR has determined the subject residence's quality of construction to be a Grade 8 minus. The average home in the State of Montana is a Grade 5; therefore, construction costs are adjusted up or down as the grade moves away from the average. The costs for the subject property were increased by 195% as illustrated above.

### DISCUSSION

The taxpayer's requested land value of \$18,000 was based on the DOR's value of an adjacent property. The taxpayer paid in excess of the DOR value determination.

The Board does not dispute the fact the taxpayer sold a physically similar residence in Texas, but the market conditions in Montana cannot be compared to market conditions in Texas; therefore, the sale of the residence in Texas has no bearing on the market value of the subject property.

The 1997 [Montana Appraisal Manual] (pg. 42-17) describes a Grade 8 residence as:

Residences are of highest quality construction built with best quality materials and workmanship with custom craftsmanship throughout. Exterior detail with well designed high quality fenestration. Interiors are well finished with highest quality wall coverings or hardwood paneling. These homes are individually designed and are usually unique, however, the base specifications does not represent the highest costs in residential construction.

The manual (pg. 42-14) describes a Grade 7 residence as:

Residences are of high quality construction, built with high quality materials, workmanship and custom craftsmanship. Exterior ornamentation show refinements with good quality fenestration throughout. Interiors are well finished with good quality wall coverings or wood paneling and hardware. These homes are usually individually designed.

The manual describes further differences between a Grade 7 and a Grade 8 residence. This manual is a tool used by DOR appraisers to appropriately appraise residential property. The subject property may have some components identified within a Grade 8 residence but, based on the evidence and testimony, the overall description more accurately reflects that of a Grade 7.

Taking into account those components which are identified within the Grade 8 description, it is the Board's opinion, the proper grade for the subject property is that of a Grade 7 plus.

The taxpayer was able to purchase various components of the residence at a reduced cost through Power Townsend Company. He stated that lumber was obtained at a 15% savings and other construction components were obtained at a 22% savings (i.e. cabinets, electrical fixtures, etc.).

The DOR's post-hearing submission, the "Comparable Sales" sheet for the subject property, illustrates exactly that to which Mr. Blatt testified. The properties selected by CAMAS are not in any way comparable to the subject property (i.e.

land area, living area, grade, etc).

The DOR modified the cost approach by an ECF of 112%.

The Montana Appraisal Manual, 47-2 defines the economic condition factor:

The economic condition factor is a component of depreciation or market adjustment that is usually applied after normal depreciation. It is normally 1.00 (100%) for the majority of properties where the cost index has been properly established and the depreciation schedules have been adequately calibrated.

It has a role in representing the effects of the economic climate on unique properties in a boom or bust economy. It can affect individual properties, or it can affect a whole class of properties. In a boom economy, market demand can force market prices above actual construction costs, with both new houses and used houses selling well in excess of stabilized construction costs.  
(emphasis applied)

The application of an ECF of 112% may further be tested by the DOR's post-hearing submission, by the indication that the sales selected by CAMAS are not comparable. This 112% ECF may have been developed from market data from a different quality of residential property than that which the DOR has determined the subject property to be. The DOR's application of an ECF of 112% has not been supported by the evidence or testimony.

When asked the question of why the effective age and actual age are not synonymous, Mr. Blatt stated:

Our study of sales of homes indicated to us that houses, and there's a whole range we looked at, all age groups, but houses built in 1993 were selling essentially the same or for the same amount as a house built in 1996.



The 1997 "Montana Appraisal Manual" (pg. 33-11) defines effective year:

If the condition of the building is better than average, the effective year will be more recent than the actual year built. If the condition is worse than average, the effective year will be greater than the actual year built.

Major alterations, additions or rebuilding can extend the useful life of a building and add to its present value.  
In such cases, the chronological life is not a solid indication of the amount of depreciation that should be applied. The "effective age" should be the guide.  
(emphasis added)

The *Dictionary of Real Estate Appraisal, 3rd Edition*, defines effective age:

The age indicated by the condition and utility of a structure. It is the Board's opinion that Mr. Blatt's reasoning for modifying the effective age based on sales, does not fit either of these definitions; therefore, based on the evidence and testimony, the effective age and the actual age for the subject property should be 1993.

The taxpayers construction cost of \$193,362.62, as illustrated on exhibit #3, is not a true indication of market value since various components were purchased at an owner's discount from the Power Townsend Company.

#### **CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter. "15-2-301 MCA.

2.        §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3.        The appeal of the taxpayer is hereby granted in part and denied in part and the decision of the Lewis and Clark County Tax Appeal Board is reversed.

**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Department of Revenue shall make the following changes to the property record card for the subject property and implement the market value generated by CAMAS for 1997:

1.        Change the "Effective Age" to 1993.
2.        Change the "Grade" from an 8 minus to a 7 plus.
3.        Remove the "Economic Condition Factor" of 112%

The value of the land shall remain at \$27,286. The decision of the Lewis and Clark County Tax Appeal Board is hereby reversed.

Dated this 20th day of June, 1998.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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PATRICK E. MCKELVEY, Chairman

( S E A L )

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GREGORY A. THORNQUIST, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.